

HOA RESPONSE TO CANCELLED EGM DUE TO BE HELD ON 14 APRIL 2023

From: Cabrera HOA [mailto:cabrerapol1services@gmail.com]
Sent: Friday, April 21, 2023 7:01 AM
Subject: Cancelled EGM

Dear Association Members and Cabrera homeowners,

We have all spent the last few days digesting the fallout of the cancelled EGM.

What do we make of it?

The official reason behind the cancellation was that some “new information” had been found in the 11th hour that had not been included in the technical report and needed to be assessed.

We find it hard to believe that after some many months of important work something so essential to the calculations could have been overlooked. Still, we have requested that the information be released immediately for us all to assess. So far we have received nothing.

So, what really caused the JDC to be cancelled at such short notice?

1. We know that the Mayor received an unprecedented number of direct written expressions of concern about the many deficiencies with the developers’ “technical report”. As we are now in a period running up to the Turre municipal elections, she may have ordered the meeting to be cancelled in order to avoid bad publicity. We have not heard any replies or communications from the Mayor as of yet, which shows a total lack of responsiveness to the tax paying homeowners of Cabrera. We have reminded the Mayor of her legal responsibility to supervise, control and inspect the JDC activities and accounts. Yet her behavior suggests a preference for the status quo, meaning supporting the position of developers who, ironically, are apparently significant debtors to the Town Hall. We need to keep the pressure on, particularly with the election in sight.
2. Several direct emails involving José Jerez immediately after the cancellation confirmed his personal malice aimed at homeowners and his unwavering intention to find a way - by hook or by crook - to make homeowners pay for as much as possible, including the infrastructure he should have built. It is clear that we will need to continue to exert firm legal pressure on the developers and to take advantage of our considerable strength in numbers to counter this bullying behavior’s and the abuse of power derived from the developers’ block vote. It is important to note that the use of block votes in similar situations has been proven to be illegal by Spanish courts.
3. The JDC Board is effectively now down to three members: Segundo Ramírez, José Jerez and John Bailey. The others have either resigned, are resigning, or have sold their properties. Maybe now is the time for the remaining delegates to see that there is no viable way out of this mess other than complying with the court order and sitting down with homeowners to discuss the future of Cabrera, with honesty and transparency.

Things ARE changing in Cabrera. It is clear that the developers and the TH have never before been faced with the level of response and solidarity that our HOA is bringing to bear. It seems to be bearing fruit. We need to maintain the pressure from all angles. Our next email to the Mayor will include a copy to the Ombudsman for Andalucía with a complaint that the Mayor fails to acknowledge the serious allegations raised by law abiding, tax paying homeowners and instead appears to be complicit with the maneuvers of the developers to maintain absolute control over Cabrera.

And when the developers make a new move, we will be ready with our response. The legal letter from our legal advisors was devastatingly thorough in pointing out the multiple deficiencies of the technical report and the complete lack of compliance of the process that the developers intended to steamroll through at the EGM.

For the vast majority of you who are members of the HOA already, we hope the inertia and energy behind our group efforts, and the level of consensus achieved, provides comfort and some sense of security. Where once our individual concerns and complaints were constantly ignored without any threat of repercussions, we now stand strong to defend homeowner interests with all the power of law behind us and with a common voice.

For those that have still not joined, we hope you will join us in helping to build a brighter path for Cabrera. We can only get stronger with the ever increasing numbers and we welcome non-members to apply using the attached forms.

Regards

Damon, Anthony, David & Jennifer & Manuel

The Honorable María Isabel López Alias
Mayor of Turre
mlopezal@turre.es

**RE: EXTRAORDINARY GENERAL ASSEMBLY - JUNTA DE COMPENSACION CORTIJO CABRERA,
POL. 1 – 14 April 2023**

We write to you regarding the EGM of the Junta de Compensación de Cortijo Cabrera, Poligono 1, which is scheduled to take place on Friday the 14th of April.

You will be aware of the on-going difficulties homeowners are experiencing in Cabrera. You will also be aware of the Court Sentence obliging the Town Hall and the Junta de Compensacion Board to comply with the foundational statutes. In order to establish compliance, the Courts required the JDC to undertake an independent assessment and audit of the distribution of expenses in the area since 1993.

You were unfortunately unable to attend the 2022 AGM. However, as the Town Hall has 29.73% of the voting power of the Junta de Compensacion, and a supervisory responsibility under law, we would kindly request that you attend to monitor the proceedings and to listen to the position of the homeowners with regard to the on-going disputes. We also ask that the Town Hall architect, Simon Rubio, joins you at this meeting because he has key knowledge about Cabrera and the obligations of the Promotores.

As you know, the JDC commissioned a technical report which is in no way independent and, therefore, cannot be deemed to comply with the court ruling. It is based on numerous faulty assumptions and suppositions, lacks essential supporting documentation and is clearly biased in its propositions. The residents of Cabrera wish to hear from you whether the Town Hall supports the conclusions of this report, while making our own comments and conclusions known to you.

If the JDC is allowed to move forward with its plan to issue new invoices based on these reports, it will surely be faced with a challenge from homeowners who will refuse to pay illegitimate invoices. The JDC will then be forced to go to the Town Hall - under our statutes and under law - for the collection of any supposed "debts". Therefore, it is imperative that you be fully informed of the dangers that this EGM poses to all involved.

We hope to receive your confirmation that you will attend the EGM to lend support to the residents that are so negatively impacted by the actions of the Developers who continue to refuse to abide by the Cabrera Statutes and continue to exercise a block vote to enhance their own advantage against the general interests of homeowners.

Yours sincerely,

Tony Butt, Damon Golder, David Levin, Manuel Pinto, Jennifer Scarfe
In representation of the Cabrera Pol. 1 Homeowners

Client: Cabrera Neighborhood Association

Date: 04/12/2023

REPORT

• Background.

This report is a preliminary analysis of the accounting report that has been submitted by the Cortijo Cabrera Compensation Board to comply with Order 181/2021 of June 17, 2021 of the Contentious Administrative Court No. 2 of Almería on Judgment No. 297/ 2020 of November 23, 2020, Ordinary Procedure No. 99/2017.

On November 23, 2020, the Judgment of the Contentious Administrative Court No. 2 of Almería was issued, which upheld the contentious-administrative appeal filed by the Cabrera Neighborhood Association against the Turre City Council, declaring null and void. the Agreement of January 14, 1993 of the General Assembly of the Cortijo Cabrera Compensation Board, as well as declaring that the maintenance/conservation expenses and urbanization expenses of the Cortijo Cabrera Compensation Board must be paid in accordance with the method set forth in the Statutes protocolized in Public Deed of Constitution granted before the Notary Mr. José M^a Calvo on August 2, 1991 under number 79 of his protocol. Said Judgment was appealed by the Cortijo Cabrera Compensation Board, an appeal that is being followed under Appeal No. 647/2021 before the Contentious-Administrative Chamber of the Superior Court of Justice of Andalusia based in Granada.

The legal representation of the Cabrera Neighborhood Association filed a request for provisional execution of meritorious Judgment no. 297/2020, issuing Order no. with Provisionally executed the judgment appealed.

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• **Contents of the Writ dated June 17, 2021.**

The Order dated June 17, 2021 issued by the Contentious Administrative Court No. 2 of Almería agrees to the provisional execution of the Judgment dated November 23, 2020, and obliges the **Turre Town Hall** so that it proceeds to comply with the operative part of the resolution that indicates that:

“ (...) expenses had to be paid from that moment in accordance with the Statutes as well as start an accounting study to determine which amounts should be returned or compensated both owners, with respect to what has already been paid since 1993 to bring cash compliance with the pronouncement of nullity”.

Therefore, by way of summary, according to the content of the Order and from its issuance, at least the expenses should have begun to be paid in accordance with what is indicated in the Statutes, that is, in accordance with what is included in the **Base 12.- PARTICIPATION FEES: The participation of each owner in the Entity, both in the distribution of benefits and in charges or losses, will be proportional to the surface of the respective plots located within the delimitation of the polygon, in accordance with article 86 of the Urban Management Regulations.**

In application of the previous criteria, the participation quotas corresponding to each one of the farms of the polygon, expressed as a percentage (or so much per thousand) in relation to the total area thereof, will be those listed in the annex attached to these bases.

That is to say, **According to the court order, two actions must be carried out immediate:**

1.- Proceed to pay the expenses in accordance with the Statutes, that is, all the owners and promoters contribute proportionally to cover the maintenance and conservation expenses.

2.- Begin an accounting study to determine what amounts should be returned or compensated to some and other owners, with respect to what has already been paid since 1993.

In other words, the court order expressly addresses the request made by the procedural representation of the Cabrera Neighborhood Association in the sense of indicating that since we are in a provisional execution and awaiting the resolution of the appeal filed against the Judgment, a partial execution of the content of the Judgment is preferable, to avoid irreversible situations or damage that cannot be repaired, and that at least what **AND** must be executed at this time is the part of the Judgment that requires from now on that conversation and maintenance expenses that accrue in the future, be already paid in proportional parts among all the owners and promoters as established in the Statutes of the year 1993.

On the other hand, the Order indicates that the accounting study must be initiated to determine the rest of the amounts, but not that the claim or payment of said amounts be proceeded at this time, but only that the preliminary study be carried out, leaving thus awaiting the outcome of the appeal.

However, the Turre City Council, instead of exercising its faculties and competences in matters of control and management, indicates to the Court that it must be the Compensation Board itself that must execute and enforce the content of the Judgment, and requires the the same to proceed to immediate compliance.

Since the month of June 2021 that the aforementioned Order was issued, it has not been until the current date of April 2023, when the Compensation Board has initiated the process to proceed with the fulfillment of the judicial mandate, for which it has presented a Accounting report written by Mr. Tomas Garcia Murcia, AECE Accredited Accounting expert, dated November 2022, report that the Cabrera Neighborhood Association shows its absolute disagreement with its content, as it suffers from a series of defects that make it unfeasible for its immediate application.

Therefore, from the moment that said accounting report is challenged by the rest of the owners, **IT IS NECESSARY TO GO TO THE JUDICIAL ROAD**, so that it is the Court

who, after an analysis of the same, proceeds, where appropriate, to its approval, with the intervention of a judicial administrator if necessary.

• **Challenge of the accounting report.**

Despite the fact that the court order obliges the Turre City Council to provisionally execute the Judgment, it is the Cabrera Compensation Board that has commissioned an accountant to write a report to recalculate the maintenance and/or conservation expenses that must be borne by the members of the Board in accordance with the provisions of the Statutes, as well as with respect to urbanization expenses.

The Turre City Council, as the control body, is in charge of enforcing the Judgment in the manner provided in the Statutes. What the Judgment establishes is that the Compensation Board is regulated in terms of the payment of the fees corresponding to maintenance and conservation expenses in proportion to its participation fee, as indicated in the Statutes, which cannot be executed or supervised by the party involved in the conflict.

Notwithstanding the foregoing, and based on the fact that it cannot be the Compensation Board itself that enforces the Judgment at its own discretion, as we have argued and as the Judicial Order itself indicates, examining the accounting report that has been presented to the owners and taking into account that an extraordinary Assembly has been convened for April 14, 2023, which among the items on the agenda seeks the approval of the compensation of balances between the owners and liquidation of debts for the 1993 period to 2021, the Cabrera Neighborhood Association is not satisfied with the content of said report because it does not reflect the reality of the accounting data necessary for the redistribution of expenses in the correct way. Thus, if the indicated accounting report is approved and the request to the Court that is hearing the provisional execution of the Judgment, the suspension of any action tending to the collection of expenses based on this report will be challenged. , which, as we say, is completely tainted with partiality and lacks essential documentary support.



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Among the deficiencies detected, we list the most significant below: 1.- The author of the report indicates that he has not had access to the entire Compensation Project and acknowledges that, therefore, the measurements reflected in the report of all the parcels are based on the data provided by the Compensation Board itself, and that it is necessary to corroborate all this data with official documentation to which it has not had access.

2.- The report alludes to another expert report from May 2022 on assessments and measurements of the facilities carried out in polygon 1 of the Cortijo Cabrera Partial Plan issued by the technical architect D. Salvador Cazorla Ramírez and the industrial technical engineer D. Jesús Gonzalez Gómez, which is not based on what has actually been paid by the promoters during all these years in the absence of invoices, but on valuations currently carried out by technicians with current prices. This cannot be accepted because it does not reflect the real expense that must be redistributed among all the owners, but only technical evaluations that do not correspond to what the promoters have actually disbursed during these years.**Lack of justification of urbanization expenses.**

3.- On the other hand, the calculations for the distribution of fees among members must be based on land ownership in accordance with the Statutes and not on the buildability as indicated in the report.

4.- Lack of reliability of the percentages of land that correspond to the owners and the City Council, because although the City Council has always exercised its right to vote based on 29.73% on the basis of its ownership of 29.73 % of land, after the 2021 Shareholders' Meeting, the promoters of the Meeting unilaterally reduced the City Council's land quota by 10%, thus substantially increasing its percentage of votes.**Lack of reliability and certainty of the % of land ownership.**

5.- The author of the report acknowledges that he has not had access to the documentation accrediting the % ownership corresponding to each member of the Compensation Board, the data having been provided by the party involved in the conflict, that is, the administration of the Compensation Board itself.



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6.- The author of the report concludes that the final result is PROVISIONAL, therefore it cannot be used as a basis for the issuance of current invoices, since real data on which to base the distribution of expenses has not been taken into account.

7.- The report does not take into account a series of infrastructure costs that were passed on directly to the owners (updating the transformer, new water tank, high voltage cable ducts,...), despite being contrary to what is established in the Statutes.

In short, the report is not based on official documentation accrediting the reality of the urbanization expenses actually paid by the promoters and the percentages of ownership are not duly verified with the appropriate percentage mediations. The author of the report himself acknowledges this, so it cannot have sufficient legal support to serve as a basis for calculating fees for maintenance and/or conservation expenses, as well as urbanization expenses.

In order to comply with the Judgment and the Provisional Execution Order, there must be a prior control by the Turre City Council in the first place, as it is the competent administrative body that must carry out a control of the management executed by the Compensation Board in accordance with indicate the Statutes and the applicable urban planning regulations, and secondly, the accounting report or provisional execution project cannot be executed at this time since the Provisional Execution Order so indicates, so that only a previous study, awaiting the resolution of the appeal filed against the Judgment by the Compensation Board, thus avoiding situations irreversible or damages that cannot be repaired.

• CONCLUSIONS

Regardless of the content of the accounting report, which the Cabrera Neighborhood Association expressly challenges and is not satisfied with it for the reasons already argued, the fact that the Compensation Board cannot by itself claim compliance with the Judgment as one of the parties involved in the conflict;

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In addition, the court order indicates that the Turre City Council should be in charge of proceeding with the provisional execution of the Judgment, and, at least, with exercising effective control and

supervision, being the only competent authority to carry out the distribution of conservation and/or maintenance expenses as indicated in the Statutes.

On the other hand, the provisional execution of the redistribution of urbanization expenses incurred since 1993 is not appropriate at this time, since we are awaiting the resolution of the appeal of the Judgment, and the Provisional Execution Order so indicates that only an accounting study should be carried out, but that cannot be carried out at this time, thus avoiding irreversible situations or damages that are impossible to repair.

It goes without saying that in the event that the Extraordinary Assembly to be held on April 14, 2023 approves any of the items on the agenda, they will be automatically challenged in administrative proceedings in the first place, and in judicial proceedings in a subsidiary manner. Likewise, the contentious-administrative court no.

any type of administrative execution of the agreements adopted in said Extraordinary Assembly, as the agreements have been adopted in contravention of the legal mandate and suppose in itself, a clear violation of the rights of the rest of the owners that make up the Cabrera Neighborhood Association, requesting likewise, the suspension of any means of enforcement for the collection of "debts" from delinquent owners, since such delinquency cannot be admitted from the moment in which the determination of the delinquent owners has been made on the basis of a defective accounting report, contrary to to the Law and that has been judicially challenged.

To end this report, simply announce our full availability to the client to expand the information contained therein if necessary.

Unless better criteria in Law, this report is prepared in Turre on April 12, 2023.

Excma. Sra. Dña. María Isabel López Alias
Alcaldesa de Turre

Estimada Sra. López,

Por la presente compartimos con usted - en anexo - el informe jurídico elaborado por los abogados de los propietarios de Cabrera, en el que se detallan los numerosos defectos de los informes encargados por los promotores que parecen contravenir las exigencias de la sentencia de la Audiencia de Almería.

Creemos que debe conocer nuestra posición al respecto. Asimismo, creemos que el uso por parte de los promotores de su voto en bloque constituye un grave abuso de poder y que las medidas que pretenden aprobar también comprometerán en gran medida al Ayuntamiento dadas sus responsabilidades de supervisión y tutela de la JDC de Cabrera.

Por último, sepa que nuestros representantes están a su entera disposición con el fin de iniciar un diálogo directo con usted con la esperanza de lograr una revolución que sea satisfactoria para todas las partes implicadas en este conflicto.

Atentamente,

Tony Butt, Damon Golder, David Levin, Manuel Pinto, Jennifer Scarfe

En representación de más de 150 propietarios, residentes y contribuyentes de Turre

Cliente: Asociación de Vecinos Cabrera

Fecha: 12/04/2023

INFORME

- Antecedentes.

El presente informe supone un análisis preliminar del Informe contable que ha sido presentado por la Junta de Compensación Cortijo Cabrera para dar cumplimiento al Auto 181/2021 de 17 de junio de 2021 del Juzgado de lo Contencioso Administrativo nº 2 de Almería sobre Sentencia nº 297/2020 de 23 de noviembre de 2020, Procedimiento Ordinario nº 99/2017.

Con fecha 23 de noviembre de 2020 se dictó Sentencia del Juzgado de lo Contencioso-Administrativo nº 2 de Almería, por la que se estimaba el recurso contencioso-administrativo interpuesto por la Asociación de Vecinos de Cabrera frente al Ayuntamiento de Turre, declarando nulo de pleno derecho el Acuerdo de 14 de enero de 1993 de la Asamblea General de la Junta de Compensación Cortijo Cabrera, así como declarando que los gastos de mantenimiento/conservación y los gastos de urbanización de la Junta de Compensación Cortijo Cabrera deben ser abonados conforme al modo recogido en los Estatutos protocolizados en Escritura Pública de Constitución otorgada ante el Notario Don José M^a Calvo el día 2 de agosto de 1991 bajo el número 79 de su protocolo. Dicha Sentencia fue recurrida en apelación por la Junta de Compensación Cortijo Cabrera, apelación que se sigue bajo el Recurso de Apelación nº 647/2021 ante la Sala de lo Contencioso-Administrativo del Tribunal Superior de Justicia de Andalucía con sede en Granada.

La representación letrada de la Asociación de Vecinos de Cabrera interpuso demanda de ejecución provisional de meritada Sentencia nº 297/2020, dictándose Auto nº 181/2021 de fecha 17 de junio de 2021 del Juzgado de lo Contencioso-Administrativo nº 2 de Almería por el que se ejecutaba provisionalmente la sentencia apelada.

- **Contenido del Auto de fecha 17 de junio de 2021.**

El Auto de fecha 17 de junio de 2021 dictado por el Juzgado de lo Contencioso Administrativo nº 2 de Almería acuerda la ejecución provisional de la Sentencia de fecha 23 de noviembre de 2020, y obliga al **Ayuntamiento de Turre** para que proceda al cumplimiento de la parte dispositiva de la resolución que indica que:

“ (...) se debían de abonar los gastos desde ese momento conforme a los Estatutos así como iniciarse estudio contable para determinar que cantidades corresponde devolver o compensar a unos y otros propietarios, respecto de lo ya pagado desde 1993 para llevar a efectivo cumplimiento el pronunciamiento de nulidad”.

Por lo tanto, a modo de resumen, conforme al contenido del Auto y desde su dictado se debía haber comenzado al menos a abonar los gastos conforme a lo indicado en los Estatutos, es decir, conforme a lo recogido en la **Base12.- CUOTAS DE PARTICIPACION**: *La participación de cada propietario en la Entidad, tanto en la distribución de beneficios como en las cargas o pérdidas, será proporcional a la superficie de las parcelas respectivas situadas dentro de la delimitación del polígono, conforme al artículo 86 del Reglamento de Gestión Urbanística.*

En aplicación del anterior criterio, las cuotas de participación correspondientes a cada una de las fincas del polígono, expresadas mediante porcentaje (o tanto por mil) en relación a la superficie total de éste, serán las que constan relacionadas en el anexo adjunto a las presentes bases.

Es decir, **conforme al Auto judicial hay que realizar dos actuaciones de manera inmediata:**

1.- Proceder a abonar los gastos conforme a los Estatutos, es decir, contribuir todos los propietarios y promotores de manera proporcional para sufragar los gastos de mantenimiento y conservación.

2.- Iniciarse un estudio contable para determinar que cantidades corresponde devolver o compensar a unos y otros propietarios, respecto de lo ya pagado desde 1993.

Es decir, el Auto judicial se pronuncia expresamente a la petición realizada por la representación procesal de la Asociación de Vecinos Cabrera en el sentido de indicar que dado que estamos en una ejecución provisional y a la espera de que se resuelva el recurso de apelación interpuesto contra la Sentencia, es preferible una ejecución parcial del contenido de la Sentencia, para evitar que se produzcan situaciones irreversibles o perjuicios de imposible reparación, y que al menos lo que **SI** se debe ejecutar en estos momentos es la parte de la Sentencia que obliga desde ahora a que los gastos de conversación y mantenimiento que se devenguen a futuro, sean ya abonados por partes proporcionales entre todos los propietarios y promotores conforme establece los Estatutos del año 1993.

Por otro lado, el Auto indica que se debe iniciar el estudio contable para la determinación del resto de las cantidades, pero no que se proceda en estos momentos a la reclamación o pago de dichos importes, sino únicamente que se haga el estudio preliminar, quedando así a la espera del resultado del recurso de apelación.

Sin embargo, el Ayuntamiento de Turre en lugar de ejercitar sus facultades y competencias en materia de control y gestión, indica al Juzgado que debe ser la propia Junta de Compensación la que debe ejecutar y hacer cumplir con el contenido de la Sentencia, y requiere a la misma para que proceda al inmediato cumplimiento.

Desde el mes de junio de 2021 que fue dictado el referido Auto, no ha sido hasta la fecha actual mes de abril de 2023, cuando la Junta de Compensación ha iniciado el trámite para proceder al cumplimiento del mandato judicial, para lo cual ha presentado un Informe contable redactado por Don Tomas Garcia Murcia, experto Contable Acreditado AECE, de fecha noviembre de 2022, informe que la Asociación de Vecinos Cabrera muestra su absoluta disconformidad con su contenido, por adolecer de una serie de defectos que lo hacen inviable para su aplicación inmediata.

Por ello, desde el momento en que dicho informe contable es impugnado por el resto de propietarios, SE HACE NECESARIO ACUDIR A LA VIA JUDICIAL, para que sea el Juzgado

quien tras un análisis del mismo proceda, en su caso, a su aprobación, con intervención de un administrador judicial si fuese necesario.

- **Impugnación del Informe contable.**

A pesar de que el Auto judicial obliga al Ayuntamiento de Turre a ejecutar provisionalmente la Sentencia, es la Junta de Compensación de Cabrera la que ha encargado la redacción de un informe a un contable para el recalcu de los gastos de mantenimiento y/o conservación que deben sufragar los integrantes de la Junta conforme a lo establecido en los Estatutos, así como respecto de los gastos de urbanización.

Es el Ayuntamiento de Turre como órgano de control, el encargado de hacer cumplir la Sentencia del modo previsto en los Estatutos. La Sentencia lo que establece es que la Junta de Compensación se regule en cuanto al pago de las cuotas correspondientes a los gastos de mantenimiento y conservación en proporción a su cuota de participación, conforme indican los Estatutos, lo cual no puede ser ejecutado ni supervisado por la propia parte implicada en el conflicto.

Sin perjuicio de lo anterior, y partiendo del hecho de que no puede ser la propia Junta de Compensación la que haga cumplir la Sentencia a su libre arbitrio tal y como hemos argumentado y como el propio Auto judicial indica, examinando el informe contable que ha sido presentado a los propietarios y teniendo en cuenta que ha sido convocada una Asamblea extraordinaria para el día 14 de abril de 2023, que entre los puntos del orden del día pretenden la aprobación de la compensación de saldos entre los propietarios y liquidación de deudas del periodo 1993 a 2021, la Asociación de Vecinos Cabrera no se muestra conforme con el contenido de dicho informe por no reflejar la realidad de los datos contables necesarios para la redistribución de gastos de la manera correcta. De este modo, se procederá a la impugnación en caso de ser aprobado el indicado informe contable y la solicitud al Juzgado que está conociendo de la ejecución provisional de la Sentencia, de la paralización de cualquier actuación tendente al cobro de los gastos basados en este informe, que como decimos, está completamente viciado de parcialidad y carente de base documental de respaldo esencial.

Entre las deficiencias detectadas, enumeramos las más significativas a continuación:

1.- El autor del informe indica que no ha tenido acceso a la totalidad del Proyecto de Compensación y reconoce que, por tanto, las mediciones que refleja el informe de la totalidad de las parcelas se basan en los datos que le ha sido proporcionado la propia Junta de Compensación, y que es necesario corroborar todos estos datos con la documentación oficial a la que no ha tenido acceso.

2.- Alude el informe a otro informe pericial de mayo de 2022 sobre valoraciones y mediciones de las instalaciones realizadas en el polígono 1 del Plan Parcial Cortijo Cabrera emitido por el arquitecto técnico D. Salvador Cazorla Ramírez y el ingeniero técnico industrial D. Jesús Gonzalez Gómez, que no se basa en lo realmente abonado por los promotores durante todos estos años ante la inexistencia de facturas, sino en valoraciones realizadas en la actualidad por los técnicos con los precios actuales. Esto no puede ser admitido porque no refleja el gasto real que debe ser redistribuido entre todos los propietarios, sino únicamente valoraciones técnicas que no se corresponden con lo realmente desembolsado por los promotores durante estos años. **Falta de justificación de gastos de urbanización.**

3.- Por otro lado, los cálculos para la distribución de las cuotas entre los miembros deben basarse en la propiedad de la tierra de acuerdo con los Estatutos y no en base a la edificabilidad como se indica en el informe.

4.- Falta de fiabilidad de los porcentajes de terreno que corresponde a los propietarios y al Ayuntamiento, pues si bien el Ayuntamiento siempre ha ejercido su derecho a voto en base a un 29,73 % sobre la base de su propiedad del 29,73 % del suelo, tras la Junta de Accionistas del año 2021, los promotores de la Junta redujeron unilateralmente la cuota del suelo del Ayuntamiento en un 10 %, aumentando así sustancialmente su porcentaje de votos. **Falta de fiabilidad y certeza del % de la propiedad del suelo.**

5.- El autor del informe reconoce que no ha tenido acceso a la documentación acreditativa del % de propiedad correspondiente a cada miembro de la Junta de Compensación, habiendo sido proporcionados los datos por la parte implicada en el conflicto, es decir, la administración de la propia Junta de Compensación.

6.- El autor del informe concluye que el resultado final es PROVISIONAL, por lo que no puede servir de base para la emisión de facturas actual, al no haberse tenido en cuenta datos reales sobre los que basar las reparticiones de los gastos.

7.- El informe no tiene en cuenta una serie de costos de infraestructuras que fueron repercutidos directamente a los propietarios (actualización del transformados, nuevo depósito de agua, conductos de cable de alta tensión, ...), a pesar de ser contrario a lo establecido en los Estatutos.

En definitiva, el informe no se basa en documentación oficial acreditativa de la realidad de los gastos de urbanización verdaderamente desembolsados por los promotores y los porcentajes de propiedad tampoco están debidamente comprobados con las adecuadas mediaciones porcentuales. El propio autor del informe así lo reconoce, por lo que no puede tener apoyatura legal suficiente para servir de base al cálculo de las cuotas para gastos de mantenimiento y/o conservación, así como gastos de urbanización.

Para proceder al cumplimiento de la Sentencia y del Auto de ejecución provisional, debe existir un previo control por parte del Ayuntamiento de Turre en primer lugar, al ser el órgano administrativo competente que debe realizar un control de la gestión ejecutada por la Junta de Compensación conforme indican los Estatutos y el reglamento de ordenación urbanística aplicable, y en segundo lugar, el informe contable o proyecto de ejecución provisional, no puede ser ejecutado en estos momentos pues el Auto de ejecución provisional así lo indica, de modo que únicamente se debe hacer un estudio previo quedando a la espera de la resolución del recurso de apelación interpuesto contra la Sentencia por la Junta de Compensación, evitando así situaciones irreversibles o perjuicios de imposible reparación.

- **CONCLUSIONES**

Con independencia del contenido del informe contable, el cual la Asociación de Vecinos de Cabrera impugna expresamente y no está conforme con el mismo por los motivos ya argumentados, resulta relevante el hecho de que la Junta de Compensación no puede por sí misma pretender el cumplimiento de la Sentencia al ser una de las partes implicadas en el conflicto;

además, el Auto judicial indica que debe ser el Ayuntamiento de Turre el que se encargue de proceder a la ejecución provisional de la Sentencia, y o al menos, a ejercer una labor de control y supervisión efectiva, siendo la única competente para realizar la distribución de gastos de conservación y/o mantenimiento conforme a lo indicado en los Estatutos.

Por otro lado, no procede en estos momentos la ejecución provisional de la redistribución de gastos de urbanización ocasionados desde el año 1993, dado que estamos a la espera de la resolución del recurso de apelación de la Sentencia, y el Auto de ejecución provisional así lo indica, que únicamente se debe relajar un estudio contable pero que no puede ser en estos momentos susceptible de ejecución, evitando así situaciones irreversibles o perjuicios de imposible reparación.

Ni que decir cabe que en caso de que la Asamblea Extraordinaria a celebrar el próximo día 14 de abril de 2023 apruebe alguno de los puntos del orden del día, serán automáticamente impugnados en vía administrativa en primer lugar, y en vía judicial de manera subsidiaria. Asimismo, será puesto en inmediata comunicación del Juzgado de lo Contencioso Administrativo nº 2 de Almería que está conociendo de la ejecución provisional nº 55/2021 la situación existente, para que de manera urgente adopte las medidas cautelares previas a la impugnación, que impidan cualquier tipo de ejecución en vía administrativa de los acuerdos adoptados en dicha Asamblea Extraordinaria, al haberse adoptado los acuerdos contraviniendo el mandato judicial y suponer en si mismo, una clara vulneración de los derechos del resto de propietarios que conforman la Asociación de Vecinos Cabrera, solicitando igualmente la paralización de cualquier vía de apremio para el cobro de "deudas" de propietarios morosos, pues tal morosidad no puede ser admitida desde el momento en que la determinación de los propietarios morosos se ha realizado sobre la base de un informe contable defectuoso, contrario a la Ley y que ha sido impugnado judicialmente.

Para finalizar el presente informe, simplemente anunciar nuestra plena puesta a disposición del cliente para ampliar la información contenida en el mismo si fuese necesario.

Salvo mejor criterio en Derecho, se confecciona el presente informe en Turre a 12 de abril de 2023.